

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW HAMPSHIRE

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4 NEW HAMPSHIRE INDONESIAN  
5 COMMUNITY SUPPORT, ET AL.,

6 Plaintiffs.

7 v.

8 DONALD J. TRUMP, PRESIDENT OF  
9 THE UNITED STATES, IN HIS  
10 OFFICIAL CAPACITY, ET AL.,

11 Defendants.

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13 TRANSCRIPT OF MOTION HEARING  
14 HELD VIA VIDEOCONFERENCE  
15 BEFORE THE HONORABLE JOSEPH N. LAPLANTE

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P R O C E E D I N G S

THE CLERK: Good morning, your Honor.

We're here in the matter of New Hampshire Indonesian Community Support, et al. versus Donald J. Trump, et al., 25-cv-38-JL, for a motion hearing.

THE COURT: Good morning, everyone.

MR. WOFSY: Good morning, your Honor.

MR. FUCHS: Good morning, your Honor.

THE COURT: We're here on a motion for clarification of the Court's prior preliminary injunction in this case. Why don't we start by having counsel, not everybody, but counsel who are going to speak for the parties today identify themselves for the record. We'll start with the plaintiffs.

MR. WOFSY: Good morning, your Honor. Cody Wofsy, ACLU, for the plaintiffs.

THE COURT: Good morning.

And defense.

MR. FUCHS: Good morning, your Honor. Yuri Fuchs, trial attorney from the Civil Division at the Department of Justice on behalf of the defendants.

THE COURT: Good morning to you.

All right. So, we are here on a motion for clarification of the order.

I guess I'll just make an observation as a preliminary that I think the defense is within its rights to make this

1 request, for sure. This type of request is authorized by the  
2 *Federal Rules of Civil Procedure*. So, technically, this is  
3 nothing unusual, but I guess I want to -- I do want to start --  
4 we had a little bit of a housekeeping conference to set this up  
5 a few days ago.

6 Attorney Fuchs, were you on that call?

7 MR. FUCHS: I was, your Honor.

8 THE COURT: I'm going to ask you a couple of things we  
9 talked about there, just so we sort of have it on the record  
10 here. I think I anticipate your answers, but I think it's  
11 important to have a complete record, although things have  
12 changed a little bit in that there's been an emergency request  
13 for a stay of the three pending nationwide injunctions on the  
14 same issue in this case. I've reviewed that. I've reviewed  
15 both. So, I guess I want to ask you again, though, given that  
16 there are three nationwide injunctions pending on this  
17 birthright citizenship Executive Order -- I know the one in the  
18 First Circuit, a stay was denied of that one. I'm not sure  
19 about -- I think a stay was also denied in the one out of  
20 Maryland, if I remember right.

21 MR. FUCHS: Yes. And the Ninth Circuit as well, your  
22 Honor.

23 THE COURT: All three of them.

24 MR. FUCHS: Yes.

25 THE COURT: Given that that's the state of play here,

1 right, why is clarification of this particular order, which  
2 hasn't been appealed yet, anyway, and it appears that the  
3 government is honoring the injunctions, at least so far, what  
4 is the -- what's the necessity for the clarification?

5 MR. FUCHS: So, to repeat kind of the points from a  
6 few days ago, your Honor, and to add another one, the  
7 government --

8 THE COURT: We're having some trouble with the audio.

9 MR. FUCHS: -- assess its compliance with --

10 THE COURT: Counsel, counsel, time out.

11 MR. FUCHS: I'm sorry.

12 THE COURT: I need you to start over, because we're  
13 having -- at least I'm having some problem with the audio.  
14 It's either going blank or it's speeding up. So, why don't you  
15 start over.

16 MR. FUCHS: Okay. Can you hear me now, your Honor?

17 THE COURT: I can.

18 MR. FUCHS: All right. So, to reiterate some of the  
19 points from a few days ago, your Honor, but also to add another  
20 one based on recent developments, as we indicated a few days  
21 ago, the government always needs to understand sort of the  
22 contours of a particular injunction in order to assess and  
23 ensure its compliance with them, whether that be both the scope  
24 as to the plaintiffs and also as well as geographic scope. We  
25 had also noted that for the purposes of whether we want to

1 appeal the preliminary injunction order and assert some of the  
2 same arguments that we've done in the other cases it is  
3 worthwhile to know the geographic scope.

4 I think the application also is particularly salient  
5 here to the extent that, if the Supreme Court were to deny the  
6 application and all of the nationwide injunctions continue,  
7 obviously that doesn't change the government's compliance of  
8 having to ensure the injunction is effectuated on a nationwide  
9 basis. But, to the extent that it actually is granted, your  
10 Honor, and the court -- the primary issue is in granting the  
11 applications the nationwide scope of these injunctions. To the  
12 extent that the court holds that nationwide scope is improper,  
13 I think it's actually more salient to understand the contours  
14 of the injunction that your Honor issued and its geographic  
15 scope both for the purposes of compliance and to ensure that  
16 our appeal arguments are consistent across the various cases.

17 THE COURT: Okay. Understood. I mean, I understand  
18 the answer. I'm not sure I completely accept it, given the  
19 fact that -- I can't imagine how the scope of this injunction  
20 could possibly be implicated, given that you're honoring three  
21 nationwide injunctions, but I do understand the impetus to just  
22 understand an order that's been issued in any given case.

23 MR. FUCHS: Yeah. If I can add, I don't want to  
24 belabor the point, for instance, if the nationwide scope of  
25 these injunctions is ruled unlawful, right, then the actual

1 geographic scope of all of them I think is actually  
2 particularly relevant for our -- for the defendants' compliance  
3 with especially your Honor's order.

4 THE COURT: That makes sense. Let me ask you this  
5 question: What's the timetable for that litigation? I mean,  
6 when is the response due, if you know? When is the response  
7 due, and do you have any kind of prognostication for me  
8 regarding the timing of an order in that case?

9 MR. FUCHS: I don't dare to read the tea leaves of  
10 when the Supreme Court will ever act on something, so I can't  
11 speak to that, your Honor. I don't have -- unfortunately, I'm  
12 sorry, I don't have the response to the application in front of  
13 me.

14 THE COURT: Okay. Mr. Wofsy, are you involved in that  
15 litigation at all?

16 MR. WOFSY: We're not direct parties. You know, I've  
17 sort of communicated with some of our colleagues. My  
18 understanding is that there is no response date set yet.

19 THE COURT: Okay. Well, there you go.

20 All right, then, so before I move on to the motion,  
21 anything you wanted to add, Mr. Wofsy?

22 MR. WOFSY: There is one point I just want to bring to  
23 the Court's attention. You know, I think -- we're happy to  
24 answer whatever questions the Court may have in terms of this  
25 motion, and, as we said, we don't oppose clarification. I



1 don't think it's going to surprise the Court that we are  
2 concerned about the scope issues. You know, I think, given  
3 that the government is bringing these arguments to the Supreme  
4 Court and arguing that this order should go into effect, I  
5 don't think it will surprise the Court that we are worried  
6 that, if they prevail on that, that this, you know, blatantly  
7 illegal Executive Order is going to start impacting people,  
8 depending on what the contours of the Court's decision might  
9 be.

10 So, I did want to just flag for the Court that we are  
11 considering the possibility of seeking a class in this case,  
12 and, in particular, a nationwide class. That may not be  
13 surprising to the Court. Obviously, this is something that the  
14 government itself raised in the stay application. It's at page  
15 38 of its Supreme Court stay application, where it's indicated  
16 this is, in its view, a proper way to obtain nationwide  
17 protection for everyone. So, I wanted to raise this for the  
18 Court, you know, both to give you a heads-up and also to see if  
19 there's any questions or thoughts that the Court wanted to  
20 share at this point, obviously. There's no motion yet, and so  
21 it may be premature, but I did want to raise that.

22 The other thing I just wanted to say about that is in  
23 terms of, just to share our thinking, in terms of the  
24 possibility of seeking class-wide relief, I think that the key  
25 thing for us would just be a question of speed. As I said,

1 this is a blatantly unconstitutional order. I think it's  
2 telling that the government has not argued that it's likely to  
3 succeed on the actual constitutional or statutory merits in any  
4 of the stay papers in any of the proceedings, including up to  
5 the Supreme Court, and so I think for us the concern is that  
6 delay in obtaining relief, you know, should the Supreme Court  
7 limit these injunctions, would mean that children would be  
8 exposed to all the harms we've talked about immediately.

9 So, anyway, that is kind of what we're thinking. We,  
10 obviously, are still digesting the stay application and  
11 thinking things through, given that this just came in  
12 yesterday, but wanted to share our current thinking with the  
13 Court.

14 THE COURT: Understood. All right.

15 So, Mr. Fuchs, I have read your motion as well as the  
16 supplemental authority that the parties have filed. I think  
17 there was a couple of instances of supplemental authority. One  
18 was the First Circuit denial of a stay and now the application  
19 for I guess what I would call an emergency stay at the  
20 U.S. Supreme Court level on all three of the other cases,  
21 right? So, I've read all that. And I guess -- I understand  
22 the questions. If you want to speak more about the questions  
23 you've raised, Mr. Fuchs, you can. You shouldn't feel the need  
24 to, though. I do understand them, but I'm happy to listen.

25 MR. FUCHS: No. I don't want to belabor the point,

1 your Honor.

2 THE COURT: Fair enough.

3 Anything you want to add to -- you've given me a  
4 heads-up, Mr. Wofsy, about the possibility of seeking class  
5 certification, but just on the merits of this motion anything  
6 you want to say?

7 MR. WOFSY: No, your Honor. Thank you.

8 THE COURT: Okay. Well, look, here's -- so what I did  
9 tell you earlier was I'm not prepared to supplement my order  
10 with another order, but I am happy to answer your questions,  
11 bottom line, and the transcript of this proceeding can be your  
12 record, and I'll order the preparation of that so you have  
13 that. Nobody needs to do that. I'll ask the court reporter  
14 now to prepare a transcript of this proceeding today as a  
15 supplement to the injunction order.

16 Before issuing the injunction, I did carefully  
17 consider and research the topic of national -- not national --  
18 nationwide injunctions or universal injunctions, not because I  
19 was inclined to grant one, because I'm, frankly, disinclined,  
20 but because the plaintiffs requested it. I mean, they  
21 specifically asked for it, and I thought, well, I need to look  
22 at this. There's lots of scholarly authority on the issue, and  
23 there's some judicial authority on the issue, with precedent  
24 and cases discussing the concept. It strikes me in the reading  
25 I've done that what authority is out there, both scholarly,

1 academic and judicial, is less focused on the facts and  
2 circumstances either favoring or militating against nationwide  
3 or universal relief in any given litigation or guidance on when  
4 or when not to grant or deny nationwide or universal injunctive  
5 relief. It more seems to be focused on judicial power, the  
6 judicial role and its limits under our constitutional system  
7 and under Article III, not just Article III, but the separation  
8 of powers that infuses our system. My -- this Court's view of  
9 the separation of powers and Article III leaves me disinclined  
10 to grant nationwide or universal injunctive relief.

11 So, I'll just say, first of all, this Court's  
12 injunction is not a nationwide injunction. Secondly, this  
13 Court's injunction is not a universal injunction.

14 I don't know if there is a principal difference  
15 between those two concepts, to be honest. What discussion I  
16 can find -- I see both terms used in the media and sometimes  
17 even in court papers. If there is a difference, I guess it's  
18 this idea of parties involved versus geography, but I'm not  
19 sure how principled that distinction really is.

20 The bottom line, though, this Court's injunction is  
21 written to be neither universal nor nationwide. Now, by its  
22 terms it's meant to apply, you know, "within the jurisdiction  
23 of this court, during the pendency of this litigation."

24 I recognize that an appellate review of this order or  
25 an appellate court reviewing it might take a different view

1     than my intentions; it might simply decide that that language  
2     is either more universal or nationwide than I have intended it  
3     to be, but that's a decision for another court. My intention  
4     was not to issue a nationwide nor a universal injunction.

5             So, that clarifies, I think, the main issue.

6             I guess I'll ask Mr. Fuchs, then, knowing that, do you  
7     require more clarification, and, if so, tell me what you want  
8     to know.

9             MR. FUCHS: I guess, your Honor, is it then -- reading  
10    the terms of your orders, your Honor's order, is it then  
11    confined to the District of New Hampshire or --

12            THE COURT: Well, the Court's injunction applies to  
13    all members of the plaintiff organizations, not just those  
14    referred to in the papers, all members.

15            Now, look, Mr. Wofsy said several times in this  
16    litigation, and I agree with him, that it would not be  
17    difficult to work out a procedural device or apparatus or way  
18    to ensure that we know who the members are, if necessary, and  
19    that could be done through any combination of a protective  
20    order, or some sealed filings, or the like. I expect counsel,  
21    if necessary, to work that out, and, if you can't work it out  
22    and file something with me, some type of stipulated approach to  
23    it, I can get involved, and I can resolve it; I can either  
24    assist you in resolving it, or I can just issue orders. But  
25    the injunction applies to all members of the plaintiff

1 organizations.

2 All right. As to the geographic question, Mr. Fuchs,  
3 I have to respond to your question with a question. So, I  
4 guess what you're asking me is are individuals who are not  
5 members of the organizations but somehow come under enforcement  
6 in the District of New Hampshire, are they protected by the  
7 injunction? Is that your question?

8 MR. FUCHS: Yeah, essentially. To sort of follow up  
9 your question with a question, so this becomes two questions,  
10 so one, as I read it, your Honor, and feel free to correct me,  
11 what you were saying before is basically the injunction entered  
12 is not nationwide per se but would apply nationwide to all of  
13 the members of the organizations who are plaintiffs in this  
14 case. Is that correct?

15 THE COURT: Well, look, if they are parties before the  
16 Court, this Court, the answer is yes.

17 MR. FUCHS: Okay. And then the second question is,  
18 excluding those individuals who are part of this case, does  
19 your Honor's order affect nonparties within the jurisdiction of  
20 the District of New Hampshire?

21 THE COURT: I'd say technically no, but let me ask you  
22 this: I'm trying to envision a child born who would be subject  
23 to the enforcement of this order, right? Can you conceive of a  
24 person who would be born after the effective date of the order,  
25 who would be subject to the order, who would not be entitled to

1 the same relief in this jurisdiction if they came to the court?  
2 I can't think of one. I can't think of such a person who would  
3 not be entitled to the same relief, given this Court's  
4 interpretation of the law. Is there such a human that could  
5 exist?

6 MR. FUCHS: I kind of don't want to wade into that,  
7 your Honor, because we haven't had any -- for the reasons  
8 stated many moons ago that there hasn't been any kind of  
9 meaningful guidance or thinking about this from the agencies,  
10 and I don't want to propound an explanation of how that would  
11 work without --

12 (Mr. Fuch's audio connection stopped)

13 MR. FUCHS: -- thinking about that in the first place.

14 THE COURT: All right.

15 (The court reporter asked Mr. Fuchs to repeat his statement)

16 MR. FUCHS: Sorry. To repeat --

17 THE COURT: Basically he said he didn't want to weigh  
18 in on the question.

19 MR. FUCHS: Basically, yeah. Thank you.

20 THE COURT: Yeah. Well, look, I can't conceive of  
21 individuals who would be covered by the Executive Order but who  
22 would not be entitled to the identical relief if it was  
23 requested with respect to enforcement within this district. I  
24 can't think of such a person.

25 So, I guess my answer to your question is, Mr. Fuchs,

1 as a technical matter, no, it doesn't apply to such  
2 individuals, the order, but as a practical matter it  
3 effectively does, because anyone seeking similar relief would  
4 receive it from the Court, given the Court's interpretation of  
5 the applicable statute and the Fourteenth Amendment.

6 MR. FUCHS: Understood, your Honor. Thank you.

7 THE COURT: I think that answers all the questions in  
8 the motion, so let me just ask each of you, anything else I can  
9 do for you?

10 MR. FUCHS: Nothing further from us, your Honor.  
11 Thank you very much.

12 THE COURT: Mr. Wofsy?

13 MR. WOFSY: I do have one question, I guess, coming  
14 out of this conversation, your Honor, and, obviously, I  
15 understand if it feels premature, but, thinking about this  
16 class question, I think what I hear the Court saying is that  
17 it's concerned about its jurisdiction or maybe propriety to  
18 issue a nationwide injunction in the sense of an injunction  
19 that applies across the country but protects nonparties. Am I  
20 right in assuming that those same concerns that the Court has  
21 would not apply to a nationwide class, because then everybody  
22 in the class would be parties properly before the Court, or is  
23 there some concern that I'm not understanding that we should be  
24 aware of as we're thinking through how to deal with this  
25 procedurally complex situation?



1           THE COURT: Having not thought about it much, I'll say  
2           that nationwide classes are something that this Court deals  
3           with routinely. I won't say more about it than that, but all  
4           your members of all your organizations are covered.

5           MR. WOFSY: We appreciate that. Thank you, your  
6           Honor.

7           THE COURT: All right. Well, Counsel, I want to  
8           continue to commend you for how you are approaching the  
9           litigation. I feel the same way I felt at the injunction  
10          hearing. I do think having excellent counsel, experienced  
11          counsel, thoughtful counsel, as you both are, briefing these  
12          issues and litigating them in court in a collegial way is the  
13          best way to serve the rule of law, and that's been, at least  
14          for this litigation, everything I've seen so far has fit that  
15          description. So, I appreciate your continued participation and  
16          the spirit in which you're participating.

17          That's all I have, Counsel, and we are adjourned.

18          MR. WOFSY: Thank you, your Honor.

19          MR. FUCHS: Thank you, your Honor.

20          (WHEREUPON, the proceedings adjourned at 10:30 a.m.)  
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C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my knowledge, skill, ability and belief, a true and accurate transcription of the within proceedings.

Date: 3/14/24

/s/ Brenda K. Hancock  
Brenda K. Hancock, RMR, CRR  
Official Court Reporter